

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF REVENUE**

In the Matter of	)	
	)	
K F. M	)	OAH No. 24-0397-CSS
_____	)	

DECISION AND ORDER

I. Introduction

This case involves the modification of K.M’s child support obligation for L, the daughter he shares with custodial parent Ms. Z. On May 30, 2024, the Child Support Enforcement Division (Division) issued a Modified Administrative Child Support Order raising Mr. M’s monthly support obligation for L from \$50 to \$249 effective March 1, 2024. On appeal, Mr. M does not dispute the accuracy of the calculation of the support obligation under Civil Rule 90.3(a), but rather requests a variance due to financial hardship under Civil Rule 90.3(c).

A hearing was held in this matter over two dates in July and August 2024. Mr. M showed by clear and convincing evidence that manifest injustice would result if his obligation was not reduced by way of a hardship variance. Based on the evidence and after careful consideration, Mr. M’s ongoing obligation for L should be set at \$50 per month, beginning March 1, 2024, and ongoing.

II. Facts

A. Material Facts¹

The Division is currently enforcing three active child support orders for children ranging in age from 5-12 years old, that list Mr. M as the obligor. Including the child that is currently living with him, he is responsible for supporting seven children. In 2018 he began selling drugs as a side job to earn extra money to cover expenses. After he sold to an undercover agent he was arrested, charged federally, and received an 85-month sentence. Last year he was released to a halfway house, then graduated to ankle monitoring. In July 2024 his level of supervision was reduced to regular, mandated visits to the probation office. He will soon be assigned a specific probation officer, meaning Mr. M will have assistance with his job hunt.

¹ The material facts are taken from the hearing testimony and the documentary evidence.

Mr. M is currently employed at Employer A in Anchorage, and while hired as a part time employee, has been given additional hours during the summer busy season. His diligent search for a second job is frustrated by the fact he's a felon, but he testified about other marketable skills. He has experience power washing, taping, prepping, and painting houses. Additionally, while incarcerated he completed 1.5-year apprenticeships in both carpentry and dental assistance. He explained that he has multiple applications pending with various potential employers through the Indeed.com job website, including with Employer B.

Mr. M shares a home with his girlfriend and their five-year-old son. His Employer A paystubs show that Mr. M earns an average net monthly income of \$2760, while his partner's gross monthly income is approximately \$2200, resulting in average combined monthly wages of \$4,960. Neither he nor his girlfriend qualify for assistance programs, including food stamps. Their monthly expenses include \$1000 for rent, \$1200 for food, \$350 in utilities, \$640 for gasoline, \$250 for car maintenance and repair, \$530 for car and health insurance. Monthly he pays \$500 towards a car payment, his girlfriend, \$600.² He budgets \$200 for family haircuts and other personal expenses but spends nothing on alcohol or tobacco. He testified that is reestablishing bonds with the children who do not live with him (including L) by spending time with them on the weekends, averaging \$160 per month for movies, McDonalds, or the trampoline park. Subtracting average expenses of \$5430 from his household income of \$4960 results in a monthly deficit of about \$470.

Custodial parent Ms. Z submitted a letter expressing considerable frustration with raising L as a single parent, including spending three years seeking medical treatment for her daughter for an unidentified health condition. She acknowledged that Mr. M is struggling to reestablish his life but asserted that she is working three jobs to provide for her two children, ages 6 and 17.³ Regarding the financial situation of her household, Ms. Z did not meaningfully participate in the hearing, so nothing is known about where she is working, or for what rate of pay. She submitted a hearing expense worksheet indicating that monthly she spends \$900 for rent, \$1000 for food, \$600 for gasoline, \$81 for vehicle

² Prior to his release from jail his girlfriend independently purchased a 2022 Jeep Compass and took on the associated monthly car payments. His vehicle is a 2006 Honda Pilot.

³ Ms. Z also noted that she also has a third, adult child with special needs who lives independently, but who Ms. Z occasionally assists financially.

maintenance, \$425 for insurance, \$150 for daycare/gymnastics and \$250 for personal case, totaling approximately \$3,860 in expenses. She carries nominal consumer debt, suggesting that her household is operating in the black.

B. Procedural History

On February 1, 2023, the Division issued a Modified Administrative Support Order in this case, setting Mr. M's monthly support obligation for L at \$50, based on primary custody. At the time, Mr. M was incarcerated. In February 2024, Ms. Z requested a modification review of the order presumably in light of Mr. M's release from custody.

Relying on paystubs reflecting Mr. M's wages and hours provided by Employer A, Mr. M's employer, the Division projected an estimated gross annual income (augmented by the Permanent Fund Dividend) of \$32,958.⁴ After subtracting standard monthly deductions for taxes, social security, Medicare, unemployment insurance and support paid for prior children, his 2024 adjusted annual income totaled \$18,668, with 20%, or \$3,734 annually/\$311 monthly, available for child support.⁵ On May 30, 2024, the Division issued a Modified Administrative Child Support Order increasing his monthly obligation for L to \$249 based on primary custody, beginning March 1, 2024 and ongoing.⁶

Mr. M requested a formal hearing to contest the modified order.⁷ A telephonic hearing was held in this matter over two dates, July 15, and August 8, 2024. Mr. M participated and represented himself. Ms. Z participated briefly on July 15 before hanging up. She did not participate on August 8, but submitted a letter objecting to a variance.⁸ The Division was represented by Child Support Specialist Shawn Pattison. The hearing was recorded. All offered exhibits were admitted to the record, which closed at the end of the hearing.

Mr. M requested a hardship variance. He explained that since his release last year following an extended period of incarceration, he has been struggling to care for his family, hold a job, spend time with his children, and seek supplemental employment to cover his

⁴ Ex. 5.

⁵ Ex. 5, pp. 6-8.

⁶ Ex. 5, pp. 2-8.

⁷ Ex. 7.

⁸ Letter submitted to OAH via email on August 8, 2024.

living expenses and child support arrears.⁹ As his household ends each month falling consistently deeper in debt, he risks losing his housing and thus jeopardizing his employment.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁰ Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources" minus applicable deductions. Income includes any benefits that would have been available to the family unit should it have remained intact.¹¹ Mr. M does not contest the calculations under the primary custody formula. He requests a reduction pursuant to Civil Rule 90.3(c) because of financial hardship or unusual circumstances. As the person who filed the appeal, he bears the burden of proof.

Child support determinations calculated under Civil Rule 90.3(a) are presumed to be correct. An obligor may obtain a variance of the ongoing or pre-order arrears amount, but only if he or she shows "good cause" for the reduction.¹² To establish good cause, the parent must show clear and convincing evidence that manifest injustice would result if the support award were not varied.¹³ Good cause also may include a finding that unusual circumstances require an adjustment to an amount that is "just and proper."¹⁴ In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.¹⁵

Ms. Z did not provide sufficient information to allow for an accurate assessment of her household's financial situation. In her letter she described holding multiple jobs, but this is unhelpful without paystubs or testimony regarding her wages, profession, hours worked, etc. Also unanswered were questions about her home; if she has any roommates, if her 17-year-old is working, or if she has any other sources of financial support.

Mr. M's household is clearly in difficult financial straits. He and his partner end every month with a negative balance of \$470 even before considering any ongoing support obligations

⁹ Mr. M testified that while he was on ankle monitoring up until July 2024 the conditions of his release prevented him from holding a second job.

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987), AS 25.20.030.

¹¹ See Civil Rule 90.3 Commentary, III. Defining Income.

¹² Civil Rule 90.3(c); *Willis v. State, Dep't of Revenue, CSED*, 992 P.2d 581 (Alaska 1999).

¹³ Civil Rule 90.3(c).

¹⁴ *Id.*

¹⁵ *Id.*; Civil Rule 90.3 Commentary, VI.B.

for any of his other children, or the average of \$500 per month currently withheld from his paychecks for child support arrears. A review of his household expenses indicates few costs that could be eliminated, and while he credibly testified about his diligence in searching for a second job, as a felon this search may be more protracted. Meanwhile, as the busy summer season wanes, he expects his hours at Employer A to soon be reduced. If his support obligation of \$249 for L remains as set, Mr. M will continue to end each month in an ever-deeper deficit, and risk falling behind on rent. Losing his home will almost certainly jeopardize his employment and thus, his ability to support L - and his other children - with any amount of support.

The evidence in this case supports Mr. M's request for a variance since the expenses of his household exceed the wages earned by him and his girlfriend. It is in all parties' interests that he be granted relief under Civil Rule 90.3(c) by lowering his monthly support obligation to \$50. While this represents a significant reduction, it provides Mr. M a chance to maintain his home, and Ms. Z a small amount of financial assistance. Additionally, as Ms. Z asserted in her letter that Mr. M owes arrears, she will continue to receive the ongoing withholding amount being automatically deducted from his paychecks.

Mr. M will have to secure supplemental employment to pay his household's monthly \$470 deficit, his monthly \$500 in support arrears, and the ongoing support obligations for his children who live outside his home. It will be a challenge for him to earn this additional income while also providing for his family and allotting time to reconnect with his kids after being absent for so many years. However, he owes a \$2000 balance on his vehicle, so with continued car payments of \$500 this debt will be paid off in a few months. Additionally, Mr. M acknowledged that he has been working to find free or low-cost activities for him and his kids, including going to the park. He expressed his sincere commitment to ultimately meeting his financial obligations as well as being an involved father.

IV. Conclusion

Through evidence presented at the hearing Mr. M met his high burden of proving that his monthly support obligation as calculated under Civil Rule 90.3(a) exceeds his ability to pay and would be manifestly unjust. His request for a variance of that obligation is granted under Civil Rule 90.3(c). Beginning March 1, 2024, and ongoing, Mr. M's monthly support obligation is set at \$50 for one child based on primary custody.

V. Child Support Order

1. K.M's monthly support obligation is set at \$50 for one child based on primary custody, beginning March 1, 2024, and ongoing.
2. All other terms of the Modified Administrative Child Support Order dated May 30, 2024, remain in full force and effect.

Dated: August 26, 2024

Signed

Danika B. Swanson
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days after the date of this decision.

DATED this 02 day of October, 2024.

By: Signed
Signature
Adam Crum
Name
Commissioner of Revenue
Title

[This document has been modified to conform to the technical standards for publication.
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